IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HONOURABLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO.9034 OF 2007

DATED 26-06-2007

BETWEEN

Ch.Kalyani.

.. PETITIONER

And

Sri V.Visweswara Sastry.

.. RESPONDENTS

THE HONOURABLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO.9034 of 2007

Oral Order:

One Polipeddi Girija and others filed O.S.No.44 of 1997 in the Court of Principal Senior Civil Judge, Tenali against Polipeddi Venkata Panduranga Vittal and others for partition of the suit schedule properties therein. In the suit the trial Court appointed the respondent herein as the receiver.

The respondent conducted auction of the leasehold rights of the agricultural lands for the year 2002-03. The petitioner emerged as the

successful bidder for a sum of Rs.3,11,300/-. For the subsequent year also, she became the lessee for the same amount. It is stated that the petitioner filed ATC No.5 of 2004 before the Tenancy Special Officer-cum-Principal Junior Civil Judge, Tenali with a prayer that she must be continued as a regular tenant in respect of the said lands. Ultimately, the ATC came to be dismissed in the light of an observation made by the Tenancy Appellate Tribunal in ATA No.10 of 2004. The petitioner filed CRP No.172 of 2006 before this Court against the orders passed in ATA 10 of 2004. The said CRP was also dismissed.

The respondent filed a memo before the trial Court seeking permission to institute civil and criminal proceedings against the petitioner on the ground that she did not pay the rent for the years 2004-05 and 2005-06. The trial Court accorded permission through its order dated 15.2.2007. The same is challenged in this writ petition.

Sri SM Subhani, learned counsel for the petitioner submits that when serious action such as institution of civil and criminal proceedings against the petitioner are contemplated, the trial Court ought to have issued notice to the petitioner and examined her contentions. He submits that the said order does not accord with the settled principles of law.

Sri G.Dharma Rao learned counsel for the respondent on the other hand submits that the petitioner had misused the legal process and had enjoyed the vast extents of land without paying the rents.

A perusal of the order dated 15.2.2007 passed by the trial Court discloses that several acts and omissions attributable to the petitioner were referred to. However, it has not chosen to issue notice to the petitioner. Even assuming that the petitioner is not a party, the trial Court ought to have called upon her to explain, if necessary by

directing her being impleaded as a party to the suit or I.A. It may be true that the petitioner would be given an opportunity to defend herself in the contemplated proceedings. However, before a direction is issued by the Court the petitioner ought to have been given an opportunity.

The record discloses that the petitioner herself admitted that she enjoyed the property as a lessee between 2002 and 2006. A specific reference to the said version is made by this Court in its order in CRP No.127 of 2006. The controversy is now about the payment of lease amount for two years. This court is of the view that ends of justice would be met if the petitioner is required to make some deposit and furnish bank guarantee for the balance amount as a condition precedent for setting aside the impugned order. Hence, the writ petition is allowed and the order dated 15.2.2007 passed by the trial Court is set aside on the condition that

a) the petitioner shall d`eposit a sum of Rs.2,50,000/- with the trial Court within six weeks from today and furnish bank guarantee for the balance amount to the satisfaction of the trial Court.

b) It shall be open to the Receiver to file a suit to save limitation in the meanwhile. In case the respondent is of the view that the petitioner has to be proceeded against in any other manner, it shall be open to him to file necessary application before the trial Court which in turn shall pass orders after hearing the writ petitioner.

L.NARASIMHA REDDY,J

Dated 26.6.2007

msv